

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ADWIN UCHECHI EL,)	
Complainant,)	
)	
vs.)	Docket No. 16-0397
)	
PEOPLES GAS LIGHT AND COKE)	
COMPANY,)	
Respondent)	

RESPONDENT’S MOTION TO DISMISS

Respondent, The Peoples Gas Light & Coke Company, an Illinois corporation (“PGL”), by its attorneys, Daley and Georges, Ltd., and for this answer to the above-captioned complaint (the “Complaint”) states as follows: pursuant to 735 ILCS 5/2-619(a) the Complaint should be dismissed for lack of subject matter jurisdiction as the Complaint does not fall within the Illinois Commerce Commission’s (the “Commission”) jurisdiction.

Argument

The Public Utilities Act (“the Act”) granted the Commission exclusive jurisdiction over rates cases. 220 ILCS 5/9-252 (West 2006). The term “rate” is defined by the Act to include “every individual or joint rate, fare, toll, charge, rental or other compensation of any public utility . . . and any rule, regulation, charge, practice, or contract relating thereto.” 220 ILCS 5/3-116 (West 1996). The Court has also determined that if complaint does not challenge a rate charged by the utility, the Commission does not have jurisdiction over that complaint. *Village of Evergreen Park v. Commonwealth Edison Co.* 296 Ill.App.3d 810, 813 (1998). 735 ILCS 5/2-619(a) expressly provides for the involuntary dismissal of causes of action based on a lack of subject matter jurisdiction. *Vill. of Roselle v. Commonwealth Edison Co.*, 368 Ill. App. 3d 1097, 1103–04, 859 N.E.2d 1, 8 (2006). A party may raise a lack of subject matter jurisdiction anytime during a

proceeding. *Sheffler v. Commonwealth Edison Co.*, 399 Ill. App. 3d 51, 68, 338 Ill. Dec. 110, 126, 923 N.E.2d 1259, 1275 (2010) (citing *Illinois Consolidated Telephone Co. v. Illinois Commerce Comm'n*, 99 Ill. App. 3d 462, 425 N.E.2d 535, 54 Ill. Dec. 670 (1981)). PGL moves to dismiss Adwin Uchechi EI's Complaint under § 2-619(a)(1) because the Commission lacks subject matter jurisdiction with respect to this matter as the Complaint does not challenge a rate assessed by PGL.

A. The Motion to Dismiss Should Be Granted Because a Cause of Action regarding State and Local Gas Use Tax Falls Outside the Commission's Jurisdiction.

The Commission lacks subject matter jurisdiction of this action as the Commission does not have authority over state and local gas use taxes. The Commission is a statutory creation under the Public Utilities Act and only possesses the authority to decide cases and issue remedies under its statutory jurisdiction. *Cont'l Mobile Tel. Co. v. Illinois Commerce Comm'n*, 269 Ill. App. 3d 161, 167, 645 N.E.2d 516, 520 (1994) (citing *Homefinders, Inc. v. City of Evanston* (1976), 65 Ill.2d 115, 2 Ill.Dec. 565, 357 N.E.2d 785)). In particular, "only violations of the Illinois Public Utilities Act or of Illinois Commerce Commission rules implementing the act are actionable." *AMTRAK v. Peoples Gas Light & Coke Co.*, 776 F. Supp. 2d 759, 762 (N.D. Ill. 2011). If the Illinois Commerce Commission acts inconsistent with the Public Utilities Act, its orders are void. *Cont'l Mobile Tel. Co. v. Illinois Commerce Comm'n*, 269 Ill. App. 3d 161, 167, 645 N.E.2d 516, 520 (1994) (citing *Illinois Power Co. v. Illinois Commerce Comm'n*, 111 Ill.2d 505, 96 Ill.Dec. 50, 490 N.E.2d 1255 (1986) ("The Commission derives its power from the Public Utilities Act and any orders inconsistent with the Act are void.")).

Here, complainant, Adwin Uchechi EI, alleges that he is "exempt of [a]ll taxes" and, as such, challenges PGL's ability to collect the city and state gas use tax. PGL collects the Gas Use Tax pursuant to the Illinois Gas Use Tax Law in which purchasers who use out-of-state gas within Illinois are taxed and can pay the Illinois Department of Revenue at a self-assessing purchaser rate

or at an alternate rate. *AMTRAK v. Peoples Gas Light & Coke Co.*, 776 F. Supp. 2d 759, 764 (N.D. Ill. 2011) (citing 35 ILCS 173/5-10). The City of Chicago also imposes a gas use tax on “all persons engaged in the business of distributing, supplying, furnishing or selling gas for use or consumption within the corporate limits of the city.” City of Chicago Municipal Code § 3-40-040. Accordingly, the Gas Use Tax and its local equivalent are a state and city tax that are authorized by the respective units of government. 35 ILCS 173/5-10 (2006); City of Chicago Municipal Code § 3-40-040. The Gas Use Tax is overseen and subject to proceedings under the Illinois Department of Revenue. 35 ILCS 173/5 et seq. (2003). The Gas Use Tax does not fall under the Public Utility Act, but instead falls under state and local tax laws. Thus, the Commission lacks jurisdiction to decide this matter. Complainant’s contentions fall properly to the Illinois Department of Revenue and the City of Chicago as to exemptions from each of the applicable taxes. As such, PGL’s motion to dismiss should be granted.

B. The Commission Lacks Jurisdiction Because This Matter Does Not Involve Unlawful or Excessive Rates.

220 ILCS 5/9-252 grants the Commission jurisdiction to hear complaints regarding unlawful or excessive rates and charges. Furthermore, 220 ILCS 5/9-252 provides a complainant recourse in the event that the utility does not comply with the Commission's order. 220 ILCS 5/9-252 (West 2006). The term “rate” is defined by the Public Utilities Act to include “every individual or joint rate, fare, toll, charge, rental or other compensation of any public utility . . . and any rule, regulation, charge, practice, or contract relating thereto.” 220 ILCS 5/3-116 (West 1996). Court’s have also decided that if a complaint does not challenge a rate charged by the utility, the Commission does not have jurisdiction over that complaint. *Village of Evergreen Park v. Commonwealth Edison Co.* 296 Ill.App.3d 810, 813 (1998). Accordingly, the Commission lacks jurisdiction because this case does not involve a rate or charge.

The Commission has jurisdiction over rate cases. The term “rate” is defined as:

[E]very individual or joint rate, fare, toll, charge, rental or other compensation of any public utility, or any two or more such individual or joint rates, fares, tolls, charges, rental or other compensation of any public utility or any schedule or tariff thereof, and any rule, regulation, charge, practice, or contract relating thereto.

220 ILCS 5/3-116 (West 1996). The Complaint alleges that the complainant is exempt from taxes. Although the definition of “rate” includes many items, the definition does not discuss tax. The Public Utilities Act provision does include “other compensation of any public utility,” however, PGL does not receive compensation by collecting the Gas Use Tax. Because the Gas Use Tax is not a “rate” charged by PGL, the Commission lacks jurisdiction to decide this matter. Therefore, the Complaint should be dismissed.

C. The Commission Lacks Jurisdiction Because This Matter Does Not Involve Discriminatory Rates.

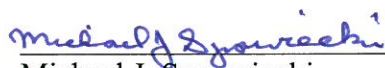
Additionally, in determining whether an action falls within the jurisdiction of the Commission or the circuit court, the courts focus on the nature of the relief sought rather than the basis for seeking relief. *Sheffer v. Commonwealth Edison Co.* 399 Ill.App.3d 51 at 68 (2010) (citing *Flournoy v. Ameritech*, 351 Ill. App.3d. 583 at 585 (2004); *Vill. of Evergreen Park v. Commonwealth Edison Co.*, 296 Ill. App.3d 810 (1998)). Sections 5-201 and 9-252 of the Act give the Commission jurisdiction only over matters pertaining to unjustly discriminatory rates. 220 ILCS 5/5-201; 220 ILCS 5/9-252, 220 ILCS 5/9-252.1, *Village of Evergreen Park v. Commonwealth Edison Co.*, 296 Ill. App. 3d at 813 (1998). Furthermore, the Commission does not have the authority to award civil money damages. 220 ILCS 5/52-01; 220 ILCS 5/9-252. Whether a claim is to be considered a claim for reparations is decided on whether the “essence of the claim is that a utility has charged too much for service”. *Pusateri v. People’s Gas Light and Coke Co.* 2014 Ill. 116844 677, 681 (2014) (citing *Sheffer v. Commonwealth Edison Co.* 399 Ill.App.3d 51 (2011)).

In this case, the complainant is not alleging that discrimination occurred in the allocation of the Gas Use tax. Instead, the case concerns the alleged inability of PGL to collect taxes in general from an alleged sovereign. As a result, this case focuses on the overall application of the tax and not discriminatory rates as required by the Act. Because this case does not involve discriminatory rates, the Commission lacks jurisdiction to hear the matter. As such, the Complaint should be dismissed.

WHEREFORE, for the above stated reasons, PGL requests that the Commission grant its Motion to Dismiss and award PGL any additional relief it deems just and proper.

Respectfully submitted,

THE PEOPLES GAS LIGHT AND COKE
COMPANY



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